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ATLANTA, GEORGIA 30309

MAILED

JAN 22 2009

In re Application of	:	OFFICE OF PETITIONS
Joseph P. Vacanti et al	:	
Application No. 10/782,750	:	ON PETITION
Filed: February 19, 2004	:	
Attorney Docket No. MIT 6971 (CMCC 450) DIV	:	

This is a decision on the petition for revival of an application for patent abandoned unavoidably under 37 CFR § 1.137(a), filed December 29, 2008. In the alternative, petitioner request that the petition be considered under 37 CFR § 1.137(b), revival of an application for patent abandoned unintentionally. The petition will be considered under 37 CFR § 1.137(b). The petitions fee under 37 CFR § 1.17(m) will be charged to petitioner's deposit account 50-3129.

The petition is **GRANTED**.

The application became abandoned for failure to properly respond to the final rejection dated June 18, 2008. No extensions of time were obtained and the application was abandoned December 19, 2008.

The petition satisfies the requirements of 37 CFR § 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal; (2) the petition fee of \$810.00; and (3) an adequate statement of unintentional delay.

37 CFR § 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR § 1.137(b) was unintentional. Since the statement contained in the petition varies from the language required by 37 CFR § 1.137(b)(3), the statement contained in the petition is being construed as the statement required by 37 CFR § 1.137(b)(3). Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the petition.

MPEP 1204.01 states:

If an appellant wishes to reinstate an appeal after prosecution is reopened, appellant must file a new notice of appeal in compliance with 37 CFR § 41.31 and a complete new appeal brief in compliance with 37 CFR § 41.37. Any previously paid appeal fees set forth in 37 § CFR 41.20 for filing a notice of appeal, filing an appeal brief, and requesting an oral hearing (if applicable) will be applied to the new appeal on the same application as long as a final Board decision has not been made on the prior appeal. If, however, the appeal fees have increased since they were previously paid, then appellant must pay the difference between the current fee(s) and the amount previously paid. Appellant must file a complete new appeal brief in compliance with the format and content requirements of 37 CFR § 41.37(c) within two months from the date of filing the new notice of appeal. See MPEP § 1205 and 37 CFR § 41.31.

In the interest of justice and fair play, Petitioner's request for reinstatement of the appeal is deemed to be sufficient notice to the Office of a new Notice of Appeal as required under 37 § CFR 1.137(b), and the said Notice of Appeal is accepted.

Petitioner's deposit account 50-3129 has been charged an additional \$20.00 to cover the cost of the appeals fee change, effective as of October 2, 2008.

The two-month period for filing an appeal brief under 37 CFR § 41.37 (accompanied by the fee required by 37 § CFR 41.20(b)(2), runs from the date of this decision.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-0602.



Thurman K. Page
Petitions Examiner
Office of Petitions